

PERSONNEL BOARD

February 1, 2007

SPECIAL MEETING

Meeting was held Thursday, February 1, 2007, City Council Chambers, County-City Building, Lincoln, Nebraska.

Members present: Ruth Jones, Sarah Jones, Maggie Stine. Members absent: Pat Borer, Ed Wimes. Personnel Department resource staff attending: Karen Eurich.

The meeting was opened at 8:35 a.m. Maggie Stine assumed the duties of Chair as per the election at the January 18, 2007 meeting.

Agenda Item 1 was the continuation of appeal hearing for John Huff — Lincoln Fire & Rescue. Mike Thew of the County Attorney's Office represented the City; Jim Zalewski represented John Huff. The proceedings were recorded by Julie Pell of J.S. Wurm & Associates and are on file in that office.

Jim Zalewski produced the original document of Exhibit 23 with the signature block pursuant to testimony of Mayor Seng at the January 18, 2007 meeting. He indicated this document was obtained from Jeff Mellen at EDM and must be returned to him. The Board observed the signatures on this document and it was pointed out by Jim Zalewski that some of the signatures run outside of the signature block onto the blue print document.

The meeting then proceeded with the continuation of Dennis Klein's testimony.

Witnesses called: Dennis Klein, Dan Wright, Rich Furasek, Steve Huggenberger, John Huff, and Don Taute. Bob Poe, Rob Koranda, and Mark Doehling testified by stipulation.

Both attorneys agreed to the calling of witnesses Dan Wright and Rich Furasek out of order due to a speaking engagement both of them had in the afternoon. Throughout the course of the meeting, Exhibit numbers 67, 68, 59, 61 were offered by Mike Thew. Jim Zalewski objected to these exhibits with the exception of Exhibit number 61 – which he objected only to page 15 of that exhibit. Chair Maggie Stine accepted into the record exhibits number 67, 68, 59, and number 61 with the exclusion of what was identified as page number 15 of this document which is already on record as exhibit number 22, but with a notation added to the page contained within exhibit number 61. Jim Zalewski also offered into the record exhibits number 22A and number 24. Exhibit number 22A was accepted into the record. Mike Thew renewed his original objections to Exhibit number 24. The Board ruled to not accept Exhibit number 24 into the record.

Upon calling witness Bob Poe, Jim Zalewski made an objection to this witness. Following discussion, both attorneys agreed to a stipulation regarding the testimony of Bob Poe, Rob Koranda, and Mark Doehling, maintenance employees at the Fire Department. After the City rested its case, Jim Zalewski made a motion to dismiss the case. Mike Thew addressed the Board with his reasons to continue the hearing. It was ruled by the Board to continue with the hearing and additional witnesses. John Huff was called and testified in his own behalf. After Jim Zalewski rested his case, Chair Maggie Stine asked City Attorney Connor Reuter if the Board could call a witness of their own. Connor Reuter advised the Board per their Personnel Board procedures they were allowed to do this. There were no objections by Jim Zalewski or Mike Thew. The Board called Don Taute.

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Following closing statements by both sides, the Board began their deliberations. It was moved by Ruth Jones and seconded by Maggie Stine to suspend deliberations and make a motion. Motion was unanimously carried by roll call vote.

It was moved by Sarah Jones and seconded by Maggie Stine to reopen deliberations. Motion was unanimously carried by roll call vote.

Following further discussion, it was moved by Ruth Jones and seconded by Sarah Jones to suspend deliberations and make a motion. Motion was unanimously carried by roll call vote.

It was moved by Ruth Jones to grant John Huff's appeal and overturn the suspension and termination. Motion died for lack of second.

It was moved by Maggie Stine to grant the appeal in regards to the termination only and to uphold the ten day suspension. Motion died for a lack of second.

Following further discussion, it was then moved by Maggie Stine and seconded by Sarah Jones to grant the appeal in regards to the termination and uphold the suspension and allow the ten day suspension to stand. Motion was unanimously carried by roll call vote.

There being no further business, the meeting adjourned at 8:55 p.m.

Karen Eurich
Personnel Operations Specialist

PC: Joan Ross, City Clerk
James Zalewski
John Huff
Mayor Seng
Mike Thew

BEFORE THE PERSONNEL BOARD OF
THE CITY OF LINCOLN, NEBRASKA

| | | |
|----------------------|---|----------------------|
| IN THE MATTER OF THE |) | FINDINGS OF FACT AND |
| APPEAL OF |) | CONCLUSIONS OF LAW |
| JOHN HUFF |) | |

NOW, this matter came on for hearing on the appeal of John Huff from the December 15, 2006 action of Mayor Coleen Seng, suspending him without pay for a period of ten days from his position as Assistant Chief of Support Services for the Lincoln Fire Department, and terminating his employment thereafter. The case was heard by Board Members Maggie Stine, Ruth Jones and Sarah Jones over two days, beginning on January 18, 2007, and concluding on February 1, 2007. The appellant was present both personally and through counsel James Zalewski. The City was represented by Deputy County Attorney Mike Thew.

Testimony was received from a total of eleven witnesses, (three by stipulation), and 98 exhibits were received. The matter was argued and submitted, and after due deliberation the Board unanimously voted to deny the appeal as to the ten day suspension without pay, but to grant the appeal with respect to the termination. Accordingly, it ordered that Mr. Huff be reinstated to his position effective January 3, 2007. The decision of the Board was based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. John Huff was hired as a firefighter for the Lincoln Fire Department on January 2, 1974. Over the course of the next 28 years he progressed through the ranks, and was ultimately promoted to the position of Assistant Chief of Support Services in August of 2002. During the 32 years of service prior to July of 2006, Mr. Huff had an exemplary work record with no disciplinary actions of any kind against him.

2. In his capacity as Assistant Chief of Support Services, Huff had overall responsibility for the entire Support Services Division, which was comprised of a Maintenance Division and a Training Division. He reported directly to the Fire Chief, Mike Spadt, and was responsible for direct supervision of the Deputy Chief of Maintenance, Dennis Klein, and the Deputy Chief of Training, Danny Wright.

3. In 2003, many of the vehicles being utilized by the fire department were in poor condition and in need of replacement. As a result, the City authorized the fire department to acquire seven new pumper trucks. Acquisition of those trucks was subject to numerous provisions of state law, the City Charter and the Lincoln Municipal Code, all of which generally required that the purchase be made by the City Purchasing Department based on formal competitive bids.

4. The first step in the purchasing process was the development of specifications for the new vehicles. That task was assigned to a group of firefighters referred to as the "Apparatus Committee," under the direction of Deputy Chief of Maintenance, Dennis Klein. Throughout the process, Deputy Chief Klein emphasized the importance of having the specifications adequately address his concerns regarding the structural integrity of the frames and chasses of the vehicles. Klein testified that his concern was based upon his experience working on the department's vehicles, and, in particular, with problems he had experienced with the frames and chasses of one manufacturer, E-One.

5. Upon completion, a draft of the Apparatus Committee's specifications was submitted for review by Chief Spadt. He ordered several revisions, including elimination of a requirement for a particular brand of frame. The revised specifications were then submitted by the Apparatus Committee to Chief Spadt on March 12, 2004. Those specifications were then

submitted to the Purchasing Department, which re-formatted them, supplemented them with standard bidding instructions and information, and then disseminated them to potential bidders.

6. In response, the City received several bids. The two lowest bids were received from Central States Fire Apparatus, a South Dakota firm, and EDM Corporation, a dealer in Lincoln, Nebraska. On June 25, 2004 Assistant Chief Huff, Deputy Chief Klein and Chief Spadt met to discuss the bids. At that meeting Klein reiterated his concerns about E-One products due to the fact that EDM had specified those products in its bid. Klein also expressed concern that the products EDM proposed to deliver would not comply with the City's specifications. Chief Huff questioned Klein's qualifications to challenge the representations made by EDM and E-One, and expressed concern regarding the City's ability to defend its position if Klein's qualifications were publicly challenged. Klein testified that following the meeting Huff directed him to tell City Purchasing Agent Vince Mejer that he "was o.k." with the bid. Huff gave a contrary version of the meeting and his input.

7. In the weeks following the June 24, 2004 meeting, there was extensive communication and extensive disagreement between Purchasing Agent Vince Major and Fire Chief Mike Spadt as to whether the bids of low bidder Central States and/or second low bidder EDM were compliant with the City's specifications. Ultimately, it was determined that the bid of Central States was not compliant, and that EDM was the successful bidder. However, when that determination was made, a number of protests were filed by unsuccessful bidders, challenging EDM's compliance with the specifications. Following its hearing on one of those protests, the City's Procurement Appeals Board found that EDM's bid was not in substantial compliance with the City's specifications, and recommended that all bids be rejected and that the purchase be rebid.

8. On November 22, 2004, Mayor Coleen Seng accepted the recommendation of the Procurement Appeals Board and ordered that the purchase be rebid. At the same time she ordered that Purchasing Agent Vince Mejer and Fire Chief Mike Spadt not be involved in the rebid process. Instead, responsibility for revising the specifications and administering the rebid process was assigned to a committee composed of City Finance Director Don Herz, who was responsible for supervising the Purchasing Department; Assistant Purchasing Agents Tom Kopplin and Mary Long; and Deputy Chief of Maintenance Dennis Klein. That group made revisions to both the substance and the form of the specifications that were designed to highlight for bidders those portions of the specifications that had been problematic in the first bid process. Among those portions was the section dealing with vehicle frames. The revised specifications emphasized that they required, "a minimum of seven heavy duty fully gusseted cross members," and that, "cross members bolted back to back are counted as one assembly." That was one of the specifications with which protestors had claimed that EDM's original bid was noncompliant.

9. The revised specifications were completed and disseminated in December of 2004, and bids were received later that month. On January 3, 2005 Mayor Seng approved the bid of EDM.

10. On January 11, 2005 Assistant Chief Huff e-mailed Don Herz proposing to send representatives of the City on three separate trips to the E-One manufacturing plant in Ocala, Florida to meet with officials there to "assure that the pumpers are built to our satisfaction." The first of those trips, designated as a "prebuild meeting," was scheduled for February 15-17, 2005. Plans called for attendance at the meeting by Assistant Purchasing Agent Mary Long, Deputy Chief of Maintenance Dennis Klein, and Fire Chief Mike Spadt. At the last minute Chief Spadt was unable to attend, and Assistant Chief Huff went in his place. During the meeting the City's

representatives and the manufacturer's representatives attempted to reconcile the factory's "build sheet" with the City's specifications to ensure that all of the specifications would be met. In the process they identified a number of changes that could be made to benefit the City. Assistant Chief Huff prepared an extensive memo documenting those changes and the justifications for them. That memo subsequently became the basis for Change Order No. 1, which formally implemented the changes.

11. Following the prebuild meeting in Florida in February of 2005, questions remained about whether the equipment being produced would meet the City's specifications. Deputy Chief Klein continued his efforts to follow up on his concerns. On May 15, 2005 he sent an e-mail to Jeff Mellen, the President of EDM, inquiring about some of the unresolved matters. The following day Mellen e-mailed Chief Spadt and charged that Deputy Chief Klein was, "continuing to 'search' for problems or ways to stir things up." Later that same day Assistant Chief Huff sent an e-mail to Chief Spadt indicating that he had spoken to Klein about the matter, and directed that all further contacts with EDM from Klein should go through him, and that Klein was not to send any further e-mails to Don Herz or Vince Mejer. Huff testified that this was done at Chief Spadt's direction in order to ensure that Spadt was not "blindsided" by something Klein had said.

12. Shortly thereafter Mellen proposed a meeting at the EDM plant in Lincoln. That meeting occurred on June 20, 2005. The City's representatives at that meeting were Assistant Chief Huff, Deputy Chief Klein and Assistant Purchasing Agent Mary Long. At that meeting EDM officials again had a "build sheet" from the factory, and much of the meeting was devoted to attempting to reconcile the contents of the build sheet with the City's specifications to determine whether the specifications were being met. During the course of the meeting Assistant

Chief Huff, at the request of Jeff Mellen, initialed the build sheet. Huff testified that in doing so he believed that the build sheet did nothing more than incorporate changes that had already been made through change orders. However, Assistant City Attorney Steve Huggenberger testified that the build sheet contained changes from the specifications that had not been included in change orders. Huggenberger also testified that EDM later relied upon Huff's initialing the build sheet as a basis for the vehicles deviating from the specifications. Based upon concerns that such a situation may arise, and after further input from Klein, Huff and Huggenberger, Assistant Purchasing Agent Mary Long, on July 25, 2005, sent EDM a "Letter of Understanding," stating that irrespective of the contents of the build sheet presented at the June 20 meeting, it was the City's expectation that all of its specifications would be met. The issue of the number of cross members was neither raised nor specifically addressed in connection with the June 20, 2005 meeting.

13. Following the June 20, 2005 meeting at EDM, a second inspection trip to the E-One plant in Florida was never scheduled despite Huff's efforts to obtain funding for such a trip. However, Deputy Chief Klein did indicate to Jeff Mellen that it was his intention to conduct a final inspection of the trucks in conformity with instruction he had received at a specifications seminar that he had attended earlier that year. Upon being advised of that fact Mellen e-mailed Chief Spadt and Assistant Chief Huff to object. The following day Mellen sent another e-mail to Huff thanking him for his response to the problem and expressing satisfaction with its resolution.

14. The final inspection was made at the E-One plant in Ocala, Florida on December 29, 2005. Present at that time were Jeff Mellen, Chief Spadt, Assistant Chief Huff and Deputy Chief Klein. Klein testified that he was not allowed to conduct the inspection in the manner he had proposed to Mellen. Klein further testified that while he was generally happy

with the trucks, particularly in comparison to those that the department presently had in service, they were not 100% compliant with the City's specifications. He testified that there were a number of items of non-compliance, including the number of cross members in the frames. He testified that he specifically pointed out that deficiency to Assistant Chief Huff, who responded by telling him that it was not a problem because the frames were warranted for life. Huff testified that those events did not take place. Klein further testified that when he voiced additional concerns about non-compliance with the specifications, Chief Spadt took him, together with Mellen and Huff, into a conference room and stated that as Chief, he had the authority to determine whether specifications were being met, and that he would take responsibility for the vehicles. Huff also testified that those events did not take place. Finally, Klein testified that after Spadt's statements he felt that it was fruitless to pursue the issue any further. Klein had no documentation of these events.

15. Upon returning to Lincoln, Klein did state on several occasions that he was "happy" with the trucks. He also stated that they were "in reasonable conformance," with the specifications. Klein testified that at a weekly chiefs' meeting he was told by Huff that he could not use the term "reasonable conformance," but Huff denied that fact. Other witnesses who were present at the meeting, Chief Danny Wright and Assistant Chief Rich Furasek, did not recall Huff making the statement. Huff, Wright and Furasek all testified that Klein did not make any complaints to them about how the trucks were being built, or any problems relating to a failure to comply with City specifications at any other departmental meetings. Klein agreed that he did not raise these issues on such occasions. Klein further testified that when questioned by the mechanics at his shop, he informed them that the vehicles were not 100% compliant with the specifications. That testimony was verified by the mechanics.

16. Near the end of January, 2006, Purchasing Agent Vince Mejer received an anonymous letter indicating that the trucks did not meet the City's specifications. He immediately faxed copies of the letter to the Law Department, the Mayor's office and the Fire Department. The Mayor's office contacted Chief Spadt about the letter and was assured by him that he had looked into the matter and that the allegations were unfounded. Klein testified that upon receiving a copy of the letter, Chief Spadt met with him and told him that the letter must have come from someone at the maintenance shop, and that if he ever found out who had sent the letter he would fire them. Klein also alleged that the next day Spadt sent his secretary to the maintenance shop to check the fax machine there to determine who had been sending documents on it, and where those documents had been sent.

17. On February 13, 2006, Chief Spadt executed a written Acceptance of the first truck. His signature was witnessed by Deputy Chief Klein. Additional trucks were subsequently accepted by Chief Spadt on April 24, April 25 and July 5.

18. In early July of 2006, a second letter was received alleging that the trucks failed to comply with the City's specifications. In a conversation with Assistant City Attorney Steve Huggenberger, Purchasing Agent Vince Mejer indicated that Deputy Chief Klein was willing to disclose what information he had regarding that accusation. After meeting and discussing the matter with Klein, Huggenberger reported to the Mayor that there appeared to be a problem. The Mayor requested that the Superintendent of Fleet Services for the City's Public Works Department, Jim Dormer, inspect one of the units for compliance with the specifications in six particular areas. Dormer concluded that the trucks did not comply with the specifications. After a follow up inspection to confirm those results, the Mayor, on July 7, 2006, held a meeting at which she requested the resignation of Chief Spadt. Huff testified that she then looked at him

and stated, "I just want you gone." After conferring with staff from the Personnel and Law Departments, she placed Assistant Chief Huff on paid administrative leave. She then ordered that the Lincoln Police Department conduct an investigation to determine whether any criminal charges should be filed. She directed the Law Department to conduct an investigation to determine if any legal action should be taken against EDM and/or E-One. Finally, she ordered that the Personnel Department conduct an investigation to determine whether any disciplinary action should be taken. The investigation by the Lincoln Police Department resulted in no criminal charges being filed. Investigation by the Law Department resulted in an agreement with E-One, and a lawsuit against EDM. The investigation by the Personnel Department resulted in a November 7, 2006 letter from Personnel Director Don Taute to Assistant Chief Huff proposing, "significant disciplinary action" against him.

19. On November 15, 2006 Assistant Chief Huff and his attorney met with the Mayor and presented evidence in response to the allegations contained in the November 7 letter from Personnel Director Taute. At the conclusion of that meeting the Mayor determined that Huff's actions and/or inactions in connection with the purchase of the trucks constituted grounds for disciplinary action under §2.76.445(f), (g) and (j) of the Lincoln Municipal Code. On the basis of that determination she suspended Huff for a period of ten days without pay, and terminated his employment effective at the end of that suspension.

20. The evidence showed that Huff was never placed in charge of the design, construction or approval of the fire pumpers at issue herein.

21. The evidence also showed that Huff never directly threatened or retaliated against Klein in any manner.

22. The City proved by a greater weight of the evidence that due to the duties and

responsibilities associated with the position of Assistant Chief of Support Services, John Huff should have known that the fire trucks supplied by EDM failed to meet all of the City's specifications.

23. The City failed to prove by a greater weight of the evidence that John Huff had actual knowledge that the fire trucks supplied by EDM failed to meet all of the City's specifications, or that John Huff took any action to prevent such information from being made known to the City.

CONCLUSIONS OF LAW

1. The hearing was conducted in accordance with all applicable procedural requirements. Both parties were given the opportunity to present evidence in support of their respective positions. Each of the determinations made by the Board received the requisite three votes.

2. Just cause for disciplinary action against employees of the City of Lincoln is defined in §2.76.445 of the Lincoln Municipal Code. In pertinent part it provides that:

Any action which reflects discredit upon the city service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action against any officer or employee of the City of Lincoln, though charges may be based upon causes and complaints other than those listed.

...

(f) Has been guilty of insubordination or any conduct unbecoming to an officer or employee of the city, either on or off duty.

(g) Incompetence to perform the duties of the position.

...

(j) Commission of acts or omissions unbecoming an incumbent of the particular office or position held, which render a reprimand, suspension, demotion, or dismissal necessary or desirable for the economical or efficient conduct of the business of the city or for the best interest of the municipal government.

3. In all cases involving dismissal or suspension of City employees, the burden of proof is on the City.

4. Because the City proved by a greater weight of the evidence that Huff should have known that the trucks supplied by EDM did not meet all of the City's specifications, his failure to do so was just cause for a ten day suspension without pay under the provisions of §2.76.445.

5. Because the City failed to prove by a greater weight of the evidence that Huff had actual knowledge that the trucks supplied by EDM failed to meet all of the City's specifications, or that Huff took any action to prevent such information from being known to the City, it failed to establish just cause to terminate Huff's employment.

IT IS THEREFORE ORDERED that the appeal of John Huff from the December 15, 2006 action of Mayor Coleen Seng is hereby denied with respect to the ten day suspension without pay, but is granted with respect to the subsequent termination. IT IS FURTHER ORDERED that John Huff should be and hereby is reinstated to his position as Assistant Fire Chief effective January 3, 2007.

DATED this 15 day of February, 2007.

CITY PERSONNEL BOARD

By: Maggie Stine
Maggie Stine, Chair